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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,839	03/15/2005	Uwe Leiner	48364	1820
1609 7590 09/13/2007 ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P. 1300 19TH STREET, N.W. SUITE 600 WASHINGTON,, DC 20036			EXAMINER - PICKETT, JOHN G	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/527,839

Applicant(s)

LEINER ET AL.

Examiner

Greg Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/15/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's Preliminary Amendment filed 15 March 2005. Claims 1-12 are pending in the application.
2. It is noted that the claims as presented are directed to a product and method of using the product. As currently presented, the method is merely the intended use of the product and its examination in conjunction with the product does not represent a serious burden at this time; therefore, no restriction is required. However, if subsequent amendments to the claims result in diverging subject matter and/or searches between the claimed inventions, the examiner reserves the right to restrict at that time.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 6, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the common rim" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 6, it is unclear as to whether the claim is dependent from claim 1, claim 5, or is multi-dependent. Moreover, use of the terminology "one or more of the following" renders the claim indefinite since it is unclear whether combinations may

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include items not listed in the claim. The terminology appears to be an improper Markush grouping.

In claim 8, use of the terminology "one or more of the following" renders the claim indefinite since it is unclear whether combinations may include items not listed in the claim. The terminology appears to be an improper Markush grouping.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt (US 3,756,386) in view of Baker et al (US 4,341,302) and optionally Maletz et al (EP 1153579 A2; provided by applicant).

Claims 1 and 6: Marckardt discloses a package (see Figure 1) comprising a first chamber 3 containing a flowable substance (Col. 2, lines 16-20), and a second chamber 2; wherein the first and second chambers are sealed in a liquid-tight manner; the package formed with a cover film 1 having a first barrier foil of metallic material (Col. 2, lines 23-25), and a base film 4 as a composite film (layers 5/6) having a second barrier foil 5 of metallic material that is softer than the first foil (see for example, Col. 1, lines 47-54); and a zone 9 connecting the first and second chambers. Marckardt functions as claimed and merely lacks the express disclosure of cover film 1 being a composite film. Marckardt suggests the package made from plastic-foil packaging techniques (Col. 2, lines 21-23).

Baker teaches that a plastic-foil composite structure was known in the art at the time the invention was made (see Col. 4, lines 47-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide cover 1 of Marckardt in a composite material in order to provide indicia on the package. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

The weakened zone is an optional feature. However, Maletz et al teaches the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an

applicator. Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz et al teaches an alternate and equivalent means for accessing the mixture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982). As shown in Figure 19, Maletz anticipates a scored area as the weakened zone, thereby rendering claim 6 obvious.

Claim 2: Marckardt anticipates the use of glue attachment (see for example, Col. 3, lines 5-7), which would constitute the claimed sealing layers.

Claim 3: Insofar as the scope of the claim may be determined, Marckardt discloses a common rim 12/14 and anticipates a welded seam as an alternative to gluing (see for example, Col. 3, lines 51-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the welding for the gluing in order to obtain a more secure seal.

Claim 4: Marckardt anticipates a single weld seam 8 (see for example, Col. 3, lines 5-7).

Claim 5: Marckardt, as modified with the composite film of Baker, discloses an outer layer on the cover film 1, which may be considered a stabilizing film.

Claims 7 and 8: Marckardt discloses weakened weld seam 9.

Claim 9: Marckardt discloses base film 4 with outer film 6.

Claim 10: Marckardt discloses standing areas (flat portion of the film) on both films (see Figure 1).

Claim 12: Marckardt-Baker, as applied to claim 1, discloses the provision of a package with substance in both chambers (see for example Col. 1, lines 3-9), exerting an external pressure on the first chamber (Col 3, lines 14-19), mixing the substances (Col. 3, lines 19-20), and dispensing the mixture (Col. 3, lines 20-25). Although Marckardt teaches partial or complete removal of one layer by peeling, Maletz et al teaches an alternate and equivalent means for accessing the mixture by the provision of a weakened zone (see for example Figure 19, item 2) for penetration by an applicator. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the weakened zone of Maletz for the peeling access of Marckardt-Baker. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marckardt-Baker as applied to claim 1 above, and further in view of Peuker et al (US 6,105,761; provided by applicant).

Marckardt-Baker, as applied to claim 1 above, discloses the claimed invention except for the two or more units.

Peuker et al teaches an array of dispensing packages (see Figure 6) for simplified storage (see Col. 3, lines 27-31), and for said purpose, it would have been

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obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Marckardt-Baker in an array. Such a modification is considered a mere duplication of parts.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Greg Pickett/  
Examiner  
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